

(2007) 04 JH CK 0090

In the Jharkhand High Court

Case No : Criminal Appeal (DB) No. 40 of 1995 (R)

Chaitu Gope and Sukra Gope

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 18-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 117
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2007) 2 BLJR 2023

Hon'ble Judges : Dhananjay Prasad Singh, J; Amareshwar Sahay, J

Bench : Division Bench

Advocate : A.K. Sahani, for the Appellant; I.N. Verma, APP., for the Respondent

Final Decision : Dismissed

Judgement

D.P. Singh, J.—This appeal is directed against the judgment of conviction and order of sentence dated 28.2.95 passed by the learned Ist Additional Sessions Judge, Gumla in Sessions Trial No. 44/93, whereby and whereunder the learned Sessions Judge held the appellants guilty under Sections, 302/34 IPC and sentenced them to serve RI for life.

2. The brief fact leading to this appeal are that the informant, Sohan Gope, PW 5, along with the deceased and PW 6 was going towards the village pond to attend the call of nature in the evening of 9th May, 1992, when he saw the appellants coming from behind carrying tangi. It is further stated that they over took the deceased Siba Gope and started assaulting him with tangi resulting injuries on his head and neck, after which he fell down. The informant further asserted that due to this attack Siba died on the spot and out of fear they could not resist and protest. Therefore when the appellants fled away from the spot he along PW 6 arrives at the house of the deceased and informed his son, PW 7 regarding the incident. The villagers were also informed, who arrived at the PO and saw the deceased. The reason behind this occurrence is said to be old enmity between the deceased and the appellants.

3. The matter was reported to Raidih police on the same evening at 7.30 PM, who recorded the statement of PW 5 and registered Raidih P.S. Case No. 33/92 under Sections 302/34 IPC. Both the appellants were put on trial by the First ADJ, Gumla after framing of charge on 5.3.93. The appellants pleaded not guilty and claimed false prosecution. However, the trial court after examining witnesses found and held both of them guilty under Sections 302/34 IPC and sentenced them as aforesaid.

4. The appellants remained in custody throughout the trial and even during pendency of the appeal. The main point raised in this appeal is that the learned trial court has not considered the contradictory statements of PWs 5, 6 and 7. According to the learned Counsel for the appellant, the evidence of eye witnesses are uncorroborated and contradictory and deserve to be disbelieved. However, the trial court has accepted their evidence. It was also asserted that the injury report prepared by PW 2, the doctor conducting the post mortem examination mentions only four injuries. It is further contended that because of enmity false prosecution cannot be ruled out. As such appellants may be acquitted of the charges.

5. We have gone through the materials on record to find out whether the appeal deserves to be allowed. The prosecution in the present case has examined altogether nine witnesses, out of which PW 1 is formal witness proving the FIR as Ext.1. PW 3, Gondi Gope, PW 4 Ratunu Gope, PW 8 Mohan Gope are hearsay witnesses of the occurrence. They arrived at the PO on hearing alarm raised by PW 7. They saw the dead body of Siba Gope and injuries on his head and neck. They are also witnesses on the inquest report and seizure list of bloodstained soil etc. These witnesses have been cross-examined at length. PW 3 has admitted that the alarm was raised by PW 7, Budhi Gope but nothing could be brought on record during cross examination of these three witnesses. PW 2, the doctor, having examined the dead body next day on 10.5.92 found four wounds on the dead body on upper portion caused by sharp cutting weapon like tangi resulting in his death. PW 9 is the IO, who recorded the statement of PW 5 in the evening of 9.5.92 and visited the PO situated near the pond. According to him, he prepared the inquest report and seizure lists in the morning of 10.5.92 due to darkness and proved them as Exts.3 and 4.

6. PW 5, Sohan Gope is own brother of the deceased, who has asserted before the police regarding the manner in which the appellants assaulted Siba with tangi on their hands. He further asserted that at that time he was going for easing himself near the pond. Thereafter, he reported the matter to PW 7 and informed the police along with PW 6. He denied during cross-examination that the deceased was an accused for the murder of the wife of Bechu Gope. He also claimed ignorance regarding the proceeding under Sections 107/117 Cr.P.C. between the appellants and the deceased. He asserted during cross examination that after working in the field and putting fodder to his oxen, he was going to ease himself when the incident took place. He further asserted that after incident

he along with PW 6 arrived at the house of the deceased and disclosed the entire facts and villagers and PW 6 also supported the informant in details. According to him, when he was going to wash his hand he heard halla and reached near the Injured Siba. He also went to inform PW 7. During cross examination this witness has asserted that he has not gone to inform the other villagers. He further asserted that when PW 7 raised alarm many villagers arrived and went to see the deceased. He denied that he was on inimical term with the appellants. PW 7 son of the deceased supported the prosecution case. During cross-examination this witness has further asserted that on his alarm villagers assembled and they went with him to see the deceased.

7. After going through the statements of PWs 3, 4 and 8, it is apparent that these witnesses are hearsay witnesses of the occurrence, who saw the dead body of Siba Gope immediately after the occurrence. PWs 5 and 6 are eye witnesses of the occurrence, who immediately informed PW 7 and thereafter went to inform the police. The FIR was lodged within an hour. The hearsay witnesses as well as the son of the deceased, PW 7 has specifically asserted that these two appellants have assaulted his father deceased Siba with tangi. The dead body has got four sharp cut injuries on it. The manner, in which assault took place, has been explained by PWs 5 and 6, consistently naming these two appellants, to have assaulted the deceased with tangi in their hand. The appellants' defence is that they were falsely implicated due to previous enmity.

8. We have gone through the impugned judgment. The trial court has considered all these facts and circumstances, vide para 7, 9, 10 and 12 of the impugned judgment. We find that the view taken by the learned trial court is correct and based upon the valid evidence.

9. Having considered the above facts and circumstances, we are of the view that the prosecution has been able to prove beyond doubts the charges against the appellants under Sections 302/34 IPC. Accordingly, the judgment of conviction and order of sentence dated 28.2.95 passed by the learned court below is hereby affirmed.

10. In the result, we find no merit in this appeal, which is, accordingly, dismissed.